

STATE OF SOUTH CAROLINA

(Caption of Case)

In Re: Complaint and Petition for Relief of South  
Carolina Net, Inc. d/b/a Spirit Communications v.  
BellSouth Telecommunications, LLC d/b/a AT&T  
South Carolina

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA

COVER SHEET

DOCKET  
NUMBER: 2016 - 79 - C

(Please type or print)

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DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda  
expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
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<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
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<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
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<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input checked="" type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
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**In Re: Complaint and Petition for Relief of South )  
Carolina Net, Inc. d/b/a Spirit Communications v. )  
BellSouth Telecommunications, LLC d/b/a AT&T ) Docket No. 2016-79-C  
Georgia, AT&T North Carolina, and AT&T South )  
Carolina**

**SURREBUTTAL TESTIMONY OF J. SCOTT McPHEE  
ON BEHALF OF AT&T SOUTH CAROLINA**

**MAY 16, 2016**

**\*\*\* PUBLIC VERSION \*\*\***

**SURREBUTTAL TESTIMONY OF J. SCOTT MCPHEE**

**ON BEHALF OF AT&T SOUTH CAROLINA**

**I. INTRODUCTION**

**Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

A. My name is J. Scott McPhee. My business address is 5001 Executive Parkway, San Ramon, California.

**Q. ARE YOU THE SAME SCOTT MCPHEE THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING ON APRIL 21, 2016?**

A. Yes.

**Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

A. I will respond to the Rebuttal Testimony of Spirit witnesses Michael Baldwin and James Covington related to the issues I discussed in my direct testimony.

**II. NATURE OF THE DISPUTE**

**Q. IS THE DISPUTE HERE OVER THE APPLICATION OF THE PARTIES' INTERCONNECTION AGREEMENT?**

A. Yes. The dispute ultimately involves the requirements of the parties' interconnection agreement ("ICA") regarding the connection between Spirit and AT&T South Carolina for Spirit to send its end-users' 911 traffic to Public Safety Answering Points ("PSAPs") served by AT&T South Carolina.

**Q. WHAT PART OF THE ICA GOVERNS SPIRIT'S USE OF FACILITIES AND TRUNKS FOR SENDING 911 TRAFFIC TO AT&T SOUTH CAROLINA?**

A. As I discussed in detail in my direct testimony, ICA Attachment 5 – 911/E911 governs arrangements for 911 traffic. Attachment 5 includes language that allows Spirit to use *facilities* that it self-provisions or obtains from a third party to deliver traffic to AT&T

1 South Carolina's Selective Routers (Attachment 5, § 3.3.2), but also includes specific  
2 language in Section 4 that requires Spirit to obtain sufficient direct, dedicated *trunks* from  
3 AT&T South Carolina between Spirit's switch(es) and AT&T South Carolina's Selective  
4 Routers. ICA, Att. 5, §§ 4.2.3-4.2.6. Attachment 5 governs the terms and conditions for  
5 911 service under the ICA, and it contains no language allowing Spirit to forego  
6 obtaining direct, dedicated trunks from AT&T South Carolina between Spirit's switch(es)  
7 and AT&T South Carolina's Selective Routers, even if the trunks may ride on another  
8 provider's facilities.

9 911 is an essential component of today's emergency services. AT&T South  
10 Carolina takes its responsibilities very seriously when it provides 911 network services to  
11 its PSAP customers. The efficient, accurate, and reliable completion of 911 calls is  
12 paramount in ensuring first responders can react quickly, and to the correct location in the  
13 event of an emergency. Because of this responsibility, AT&T South Carolina's generic  
14 contract language<sup>1</sup> requires that interconnecting CLECs such as Spirit directly connect to  
15 AT&T South Carolina's 911 network at the Selective Router. Anything less than a direct  
16 connection introduces an additional potential point of failure in a 911 call being  
17 completed. Because of this, AT&T South Carolina has been very deliberate in ensuring  
18 its contract language reflects the best efforts of both parties to ensure 911 call  
19 completion. Direct trunking from Spirit to AT&T South Carolina is one of the provisions  
20 drafted to ensure that the parties meet that goal.

21 **Q. WHAT DO YOU UNDERSTAND SPIRIT'S INTEREST TO BE IN THIS CASE?**

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<sup>1</sup> Spirit adopted AT&T South Carolina's generic ICA with no modifications. McPhee Direct at page 6, line 15 to page 7 line 2.

1 A. As I understand it, Spirit seeks to stop obtaining either 911 transport facilities or the  
2 trunks that ride those facilities from AT&T South Carolina. I had assumed that Spirit's  
3 interest was financial, which was why AT&T South Carolina witness Mr. Albright's  
4 direct testimony explained an easy way for Spirit to stop having to purchase and pay for  
5 911 transport facilities from AT&T South Carolina. Spirit, however, appears unwilling  
6 to accept that solution.

7 **Q. PLEASE EXPLAIN.**

8 A. Spirit obtains both 911 transport facilities (such as DS1s) and 911 trunks (channels that  
9 ride on facilities) from AT&T South Carolina. Spirit's Complaint focuses on charges for  
10 911 trunks, but fails to recognize that AT&T South Carolina does not bill or recover any  
11 monthly charge for 911 trunks. In direct testimony Spirit shifted its focus to charges for  
12 911 facilities instead. AT&T South Carolina then explained in its direct testimony how  
13 Spirit could use third-party 911 transport facilities under the ICA, and thus avoid paying  
14 AT&T South Carolina for such facilities. In its Rebuttal Testimony, however, Spirit  
15 rejects that option, despite its financial benefit to Spirit.

16 **Q. SPIRIT'S REBUTTAL TESTIMONY MAKES MANY REFERENCES TO**  
17 **SPIRIT'S ALLEGED ARRANGEMENTS WITH BANDWIDTH.COM. IS THAT**  
18 **RELATIONSHIP RELEVANT TO THE CONTRACT DISPUTE HERE?**  
19

20 A. No. Whatever arrangement Spirit has with Bandwidth.com ("Bandwidth") has no bearing  
21 on the terms Spirit agreed to in its ICA with AT&T South Carolina. Bandwidth is not a  
22 party to the agreement, and I cannot speak to whatever arrangements Spirit may have with  
23 Bandwidth.<sup>2</sup> The dispute here deals with contract language contained in the ICA between  
24 AT&T South Carolina and Spirit.

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<sup>2</sup> AT&T South Carolina asked for information on that relationship in discovery, but Spirit refused to provide it.

1 Q. SPIRIT'S REBUTTAL TESTIMONY ALSO REFERS TO ALLEGED 911  
2 CONNECTION ARRANGEMENTS WITH OTHER INCUMBENT LOCAL  
3 EXCHANGE CARRIERS.<sup>3</sup> ARE THOSE RELEVANT HERE?  
4

5 A. No. Every ILEC has its own types of agreements. They are not identical and not  
6 required to be. Spirit does not allege there is anything unlawful in the terms of its ICA  
7 with AT&T South Carolina. Moreover, if Spirit wanted terms in its ICA with AT&T  
8 South Carolina like those allegedly found in its ICAs with other ILECs, it could have  
9 negotiated for them before signing the ICA. Instead, however, Spirit agreed to the terms  
10 in its ICA with AT&T South Carolina, and it cannot now ignore them.

11 Q. IN YOUR DIRECT TESTIMONY YOU ATTACHED AN EMAIL FROM  
12 SPIRIT'S 911 CONSULTANT STATING THAT THE ICA HERE DOES NOT  
13 ALLOW SPIRIT TO DISCONNECT ITS 911 TRUNKS TO AT&T SOUTH  
14 CAROLINA. DID SPIRIT PROVIDE MORE SUCH EMAILS IN DISCOVERY?  
15

16 A. Yes. Attachment A (Confidential) to this testimony collects more examples. In these  
17 emails Ms. Linda Lloyd, the outside consultant Spirit uses for 911 matters and placing its  
18 disconnect orders, and who also works on 911 issues for various other CLECs,  
19 recognizes that [Begin Confidential] [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

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<sup>3</sup> Baldwin Rebuttal at page 3, lines 20-23 and page 4, lines 1-4.

1 [REDACTED]

2 [REDACTED] [End Confidential].

3 Q. DID MS. LLOYD SUGGEST A PATH FOR SPIRIT TO BE ABLE TO  
4 DISCONNECT 911 TRUNKS?

5  
6 A. Yes. Ms. Lloyd told Mr. Covington on October 16, 2013 that Spirit would need to

7 [Begin Confidential] [REDACTED]

8 [REDACTED]

9 [REDACTED] [End Confidential].

10 Q. HAS SPIRIT SOUGHT TO ENTER A NEW ICA TO OBTAIN DIFFERENT  
11 TERMS FOR 911 TRAFFIC?

12  
13 A. No.

14 Q. MR. BALDWIN CLAIMS THAT MS. LLOYD'S STATEMENTS SHOULD BE  
15 IGNORED BECAUSE SHE IS NOT AN ATTORNEY.<sup>4</sup> PLEASE RESPOND.

16  
17 A. The Commission can decide what weight to give the statements. However, they do  
18 reflect the views of someone experienced enough in 911 matters that Spirit hired her as  
19 its consultant and used her as a point of contact with AT&T South Carolina on these  
20 issues, and they do reflect her reading of the 911 trunking provisions in Attachment 5 to  
21 the ICA.

22

23

24 III. SPIRIT'S RELIANCE ON TERMS OUTSIDE ATTACHMENT 5 IS MISPLACED

25 Q. DOES SPIRIT ADDRESS ICA ATTACHMENT 5 – 911/E911 IN ITS REBUTTAL  
26 TESTIMONY?

27

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<sup>4</sup> Baldwin Rebuttal at page 11, lines 2-4.

1 A. Not to any meaningful extent, even though it was the central focus of my direct  
2 testimony. Instead, Spirit tries to rely on provisions outside Attachment 5 to claim that  
3 use of AT&T South Carolina trunks for 911 traffic is merely optional.

4 **Q. DOES ANYTHING IN ATTACHMENT 5 TO THE ICA SAY THAT USE OF**  
5 **AT&T SOUTH CAROLINA TRUNKS FOR 911 TRAFFIC IS MERELY**  
6 **OPTIONAL?**

7  
8 A. No. To the contrary, provisions in Section 4 of Attachment 5 make clear that Spirit must  
9 obtain direct, dedicated 911 trunks from AT&T South Carolina where AT&T South  
10 Carolina is the 911 service provider. ICA, Att. 5, §§ 4.2.3-4.2.6.

11 **Q. DO OTHER PROVISIONS IN THE ICA STATE THAT THEY OVERRIDE THE**  
12 **TERMS OF ATTACHMENT 5 REGARDING 911 TRAFFIC?**

13  
14 A. No.

15 **Q. MR. BALDWIN CONTENDS THAT SECTION 42.1 OF THE ICA'S GENERAL**  
16 **TERMS AND CONDITIONS (GTCs) MAKES THE USE OF DIRECT,**  
17 **DEDICATED 911 TRUNKS TO AT&T SOUTH CAROLINA'S SELECTIVE**  
18 **ROUTERS OPTIONAL.<sup>5</sup> IS HE CORRECT?**

19  
20 A. No. Section 42.1 of the GTCs simply states that the ICA is the arrangement under which  
21 the parties "may purchase from each other Interconnection Services." The entirety of the  
22 provision reads as follows:

23 42.0 Scope of Agreement

24  
25 42.1 This Agreement is intended to describe and enable specific Interconnection  
26 and compensation arrangements between the Parties. This Agreement is the  
27 arrangement under which the Parties may purchase from each other  
28 Interconnection Services. Except as agreed upon in writing, neither Party shall be  
29 required to provide the other Party a function, facility, product, service or  
30 arrangement described in the Act that is not expressly provided herein.

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<sup>5</sup> Baldwin Rebuttal at page 2, lines 12-15 and n. 2.



1 Even the title of Section 42, “Scope of Agreement” indicates that Section 42.1 is not  
2 about any specific interconnection terms and conditions, but rather a general statement  
3 that interconnection will be provided as contained within the ICA, and that “specific  
4 Interconnection and compensation arrangements between the Parties” will be covered by  
5 other, more specific parts of the ICA. Section 42.1 also makes clear that it is “[t]his  
6 Agreement,” rather than another, under which the parties may purchase “Interconnection  
7 Services” from each other.

8 Mr. Baldwin contends that the use of “may” in Section 42.1 means that each and  
9 every provision in the ICA is “optional.”<sup>6</sup> That reading does not make sense, especially  
10 in the 911 context. When a PSAP selects AT&T South Carolina as its 911 services  
11 provider, Spirit and every other CLEC sending 911 traffic to that PSAP *must* interconnect  
12 with AT&T South Carolina. There is no other option for getting 911 traffic to that PSAP.  
13 Thus, the issue in this case is not *whether* Spirit must interconnect with AT&T South  
14 Carolina where AT&T South Carolina is the 911 service provider, because it indisputably  
15 must. The only question is what facilities and trunks Spirit must maintain to transport its  
16 end-users’ 911 traffic to AT&T South Carolina’s Selective Routers. Attachment 5 to the  
17 ICA answers that question by requiring Spirit to obtain a minimum number of direct,  
18 dedicated 911 trunks from AT&T South Carolina.

19 **Q. WHAT OTHER NON-ATTACHMENT 5 PROVISIONS DOES SPIRIT DISCUSS?**

20 A. Mr. Baldwin and Mr. Covington both rely on Section 4.1.2 of ICA Attachment 2 – ISP –  
21 Network Interconnection.<sup>7</sup>

22 **Q. IS SECTION 4.1.2 OF ATTACHMENT 2 RELEVANT TO THE DISPUTE HERE?**

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<sup>6</sup> Baldwin Direct, page 9, lines 6-8.

<sup>7</sup> Baldwin Rebuttal at page 5 n.3; Covington Rebuttal at page 2, lines 1-6.

A. No. First, Section 4.1.2 is in Attachment 2 to the ICA, and it is Attachment 5 that specifically governs 911 traffic. Second, Section 4.1.2 of Attachment 2 states as follows:

4.1.2 Trunk groups for ancillary services (e.g., OS/DA, BLVI, High Volume Call In and E911) and Meet Point or Third Party (as appropriate) Trunk Groups can be established between CLEC's switch and the appropriate **AT&T-22STATE** Tandem Switch *as further provided in this Section 4.0.* (Emphasis added)

As the italicized phrase shows, the specific ICA terms governing any specific ancillary service are "as further provided in this Section 4.0." One must look further than just Section 4.1.2.

**Q. DOES ANOTHER PART OF SECTION 4.0 REFER TO 911 SERVICE?**

A. Yes. Section 4.3.8 states as follows:

4.3.8 E911 Trunk Group

4.3.8.1 Attachment 05 – 911/E911 specifies E911 trunk group requirements.

This confirms that the terms and conditions of Attachment 5 control for 911 traffic.

**Q. DO YOU AGREE WITH MR. BALDWIN'S THEORY THAT THE WORD "CAN" IN SECTION 4.1.2 OF ATTACHMENT 2 MEANS THAT TRUNKS GROUPS FOR ALL ANCILLARY SERVICES ARE MERELY OPTIONAL?<sup>8</sup>**

A. No. When read in context in Section 4.1.2 of Attachment 2, "can" simply means that trunks groups for ancillary services are able to be established for each ancillary service according to the specific terms "further provided in this Section 4.0." As just noted, Section 4.0 simply points to Attachment 5 for trunking provisions for 911 traffic. Nothing in Section 4.1.2 purports to override or modify the terms of Attachment 5.

**Q. ARE SOME "ANCILLARY SERVICES" OPTIONAL?**

---

<sup>8</sup> Baldwin Rebuttal at page 5 n. 3.

1 A. Yes, but whether an ancillary service is optional depends on the terms of the ICA  
2 regarding that particular service. For example, Busy Line Verification is an optional  
3 service, so the ICA provides for trunking for that service when a CLEC “wishes” to have  
4 the service. ICA, Att. 6, § 3.3.6.3.1. By contrast, CLECs are required to establish Mass  
5 Calling (Choke) Trunk Groups under ICA Attachment 2, § 4.3.9.1. 911 service is not  
6 optional where AT&T South Carolina is the PSAP’s chosen 911 service provider, so the  
7 CLEC (Spirit) must connect to AT&T South Carolina’s Selective Routers, and  
8 Attachment 5 includes the terms that Spirit agreed to for making that connection,  
9 including trunking requirements.

10 **Q. MR. COVINGTON IMPLIES THAT E911 EMERGENCY SERVICE CONTAINED**  
11 **IN SECTION 6 OF RESALE ATTACHMENT 16 IS AN OPTIONAL ANCILLARY**  
12 **SERVICE.<sup>9</sup> IS HE CORRECT?**

13 A. No. While the entirety of Attachment 16 is an optional offering of AT&T South  
14 Carolina’s services on a resale basis, if a carrier were to purchase Resale under  
15 Attachment 16, then the terms for 911 are provided in Attachment 5 911-E911. As I’ve  
16 already discussed in my direct testimony, connectivity to 911 services where AT&T  
17 South Carolina is the 911 service provider is required.

18 **Q. MR. BALDWIN STATES THAT “SPIRIT MAY INTERCONNECT EITHER**  
19 **DIRECTLY USING AT&T’S 911 SERVICES DESCRIBED IN ATTACHMENT 5**  
20 **OF THE ICA OR IT MAY DO SO INDIRECTLY THROUGH A THIRD PARTY**  
21 **PROVIDER OF 911 SERVICES.”<sup>10</sup> IS HE CORRECT?**  
22

23 A. No. As I discussed in my direct testimony, the language governing 911 in Attachment 5  
24 requires Spirit to provision and maintain trunks directly from Spirit’s switch(es) to AT&T  
25 South Carolina’s Selective Routers, even if those may ride on facilities provided by an  
26 entity other than AT&T South Carolina. There is no language in other parts of the ICA

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<sup>9</sup> Covington Rebuttal, page 2, lines 3-6.

<sup>10</sup> Baldwin Rebuttal at 4, lines 10-12.

1 that overrides those provisions and makes the trunking optional. Now, however, Mr.  
2 Baldwin claims that the ICA allows Spirit to “indirectly” interconnect to AT&T South  
3 Carolina’s Selective Routers, by which he seems to mean Spirit could send 911 traffic to  
4 AT&T South Carolina without obtaining direct, dedicated 911 trunks from AT&T South  
5 Carolina per Attachment 5. Nothing in the ICA allows that arrangement for 911 traffic.

6 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

7 **A.** Yes.

8

9

McPhee Surrebuttal

Attachment A

Not Attached Per Confidentiality Agreement

McPhee Surrebuttal

Attachment B

Not Attached Per Confidentiality Agreement

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **AT&T South Carolina's Surrebuttal Testimony (Public) of J. Scott McPhee** has been served upon the following via electronic filing, addressed as shown below on the 16<sup>th</sup> day of May, 2016.

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